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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|-------------------------|------------------|
| 10/700,226 | 11/03/2003 | David William Froesel | 7371 | 3104 |
| 7590 | 08/22/2005 | | EXAMINER | |
| Paul M. Denk Suite 170 763 S. New Ballas Rd Saint Louis, MO 63141 | | | CHIU, RALEIGH W | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3711 | |
| | | | DATE MAILED: 08/22/2005 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------|------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/700,226 | FROESEL, DAVID WILLIAM | |
| | Examiner Raleigh Chiu | Art Unit 3711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 June 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3,5,6,8-12 and 14 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3,5,6,8-12 and 14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 November 2004 and 23 November 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 3, 5, 6, 8 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geror (USPN 5,882,010) as previously applied in view of U.S. Patent Number 4,392,653 (Blume, Sr., hereinafter Blume).

Regarding claims 3, 5, 6 and 14, Figures 1-3 of Geror shows the recited integrally molded square box with base 20, sidewalls 18 and upstanding sleeve 14. Figures 1 and 3 also show the sleeve having an upper opening inherently capable of accommodating the insertion and removal of a metal paint can. Although Geror does not disclose the use of a metal paint can, it would have been obvious to one of ordinary skill in the art to place an insertable container within the upstanding sleeve of Geror in view of Blume in order to alter the difficulty of the game. See Figures 1-5 and column 2, lines 20-43 of Blume. To the extent the Blume fails to disclose the specific material used of his insertable member 32, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make it from metal, since it has been held to be

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within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Moreover, the Blume insert is considered to be inherently capable of being used as a paint can.

Regarding claim 8, Figure 3 of Geror best shows the doubly formed walls.

Regarding claim 12, Geror discloses the use of a pair of boxes spaced about 30 feet apart. Such a distance is considered to be approximately 25 feet apart. See column 3, lines 1-3.

Regarding claim 13, the size of the sleeve opening clearly affects the chance of a successful toss. Discovering an optimum value for a result-effective variable has been held to be within the capabilities of the person having ordinary skill in the art. As such, it would have been obvious to a person of ordinary skill, by routine experimentation, to modify the diameter of the Geror sleeve to be greater than five inches to vary the difficulty of the game. Further, containers are well-known in the art to have diameters greater than five inches and are inherently capable of being inserted into the modified Geror sleeve.

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3. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geror and Blume as applied above in view of Bour (USPN 5,909,877) as previously applied.

Regarding claim 9, it would have been obvious to one of ordinary skill in the art to provide reinforcement ribs beneath the Geror box in view of Bour in order to make the target lightweight, yet rigid. See Bour at column 3, line 53 through column 4, line 14.

Regarding claims 10 and 11, Geror discloses apertures 36 near the base corners to secure the box to the ground. See Figure 2 and column 2, lines 34-40.

Response to Arguments

4. Applicant's arguments with respect to claim 14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich, can be reached on (703) 308-1513.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu
Primary Examiner
Technology Center 3700

RWC:dei:feif
18 August 2005